THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.28334 of 1996

Dated 02-02-2007

Between:
K.Baleshwar.

..... PETITIONER

AND

The State Institute of Educational Technology, Ramanthapur, Hyderabad rep. By its Director & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.28334 of 1996

O R D E R:

The petitioner herein questions the action of the first respondent, in proceedings dated 11-07-1996, in rejecting his request for regularization of services in any Class-IV post as illegal, arbitrary, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India and for a consequential direction to the respondents to regularize his services in any Class-IV posts with effect from the date on which the third respondent was appointed on regular basis and with all consequential benefits.

The petitioner was appointed as a temporary scavenger in the State Institute of Educational Technology, vide proceedings dated 06-07-1986, and was paid Rs.75/- p.m. After the petitioner was appointed, the third respondent was appointed in the year 1986 as a part-time contingent employee to do the similar job which the petitioner was discharging. The third respondent approached the Tribunal in R.P.Nos.25074 to 25081 of 1989 and orders were passed directing that her services be regularized. On the ground that the orders were not implemented, the third respondent filed W.P.No.5142 of 1991 before this Court and this Court, by order dated 10-04-1991, directed appointment of the third respondent in the category of Khalasi. The petitioner's grievance is that he being senior to the third respondent in the last grade post, and as he had completed more than 9 years of service, was entitled for regularization of services in Class-IV post and that the first respondent ought to have appointed him in the regular Class-IV post prior to the appointment of the third respondent. According to the petitioner, vide G.O.Ms.No.318, dated 04-12-1990, the first respondent ceased to be a department of the Government and was registered as a society and has since been functioning as an autonomous body. The petitioner would submit that the first respondent is a Government society, that a writ petition

is maintainable before this Court and that the Tribunal has no jurisdiction. Petitioner would contend that he possesses the requisite qualifications to be appointed in any last grade post and since he was senior to the third respondent, his services ought to have been regularized prior to that of the third respondent.

The petitioner filed W.P.No.1347 of 1993 seeking regularization of his services in any Class-IV post and the writ petition was disposed of by order dated 05-03-1993 in terms of W.P.No.9411 of 1991, dated 22-08-1991 and W.P.No.1179 of 1992, dated 28-01-1992. Pursuant thereto, and having regard to the appointment of the third respondent in a Class-IV post, the petitioner would claim that respondents 1 and 2 ought to have regularized his services. Petitioner would refer to the proceedings dated 11-07-1996, whereby the first respondent had informed that his appointment to any Class-IV post was not feasible. Petitioner would contend that the proceedings of the first respondent dated 11-07-1996 are in violation of the orders of this Court in W.P.No.1347 of 1993 dated 05-03-1993 and, since this Court had directed that he be given the same relief as was given to the third respondent, the question of his being covered under G.O.Ms.No.212, Finance and Planning Department, dated 22-04-1994 did not arise.

This Court disposed of W.P.No.1347 of 1993 dated 05-03-1993 in terms of W.P.No.9411 of 1991, dated 22-08-1991 and W.P.No.1179 of 1992, dated 28-01-1992. This Court, by order in W.P.No.9411 of 1991 dated 22-08-1991, directed the respondents to consider the claim of the petitioner for regular appointment as sweeper/kalasi in view of the fact that he was appointed earlier than the third respondent, whose services were regularized as a kalasi. This Court observed that if the second respondent finds that the petitioner was entitled for regularization in preference to the third respondent, for the

reason that the petitioner had more years of service than the third respondent, orders regularizing the petitioner from the date earlier to the third respondent may have to be passed. W.P.No.1347 of 1993 was ordered in terms of the orders passed in W.P.No.9411 of 1991 dated 22-08-1991. The respondents were required to consider the case of the petitioner for appointment as a sweeper/kalasi, particularly, in view of the fact that he was senior to the third respondent whose services were already regularized. However, in the impugned order dated 11-07-1996, it is stated that after the Institute was converted into a society, it is following the rules and regulations of the State Government and pending finalization of the rules in the society, the petitioner's case was referred to the State Government for considering his case for appointment in any Class-Iv post in terms of G.O.Ms.No.212, dated 22-04-1994 and since there was no provision for conversion of part-time employees into full time employees, this proposal was rejected.

In the counter affidavit filed on behalf of respondents 1 and 2, it is admitted that the third respondent was junior to the petitioner, that she was appointed as per the orders of the Tribunal and that her services were regularized.

It is necessary to note that W.P.No.1347 of 1993 was disposed of, by order dated 05-03-1993, even prior to the date G.O.Ms.No.212 dated 22-04-1994 came into force. The order of this Court, in W.P.No.1347 of 1993 dated 05-03-1993, requires the petitioner's case to be considered in terms of W.P.No.9411 of 1991 dated 22-08-1991. Accordingly, the petitioner's case was required to be considered for regularization, in case, the claim that he was senior to the third respondent was found to be correct. Since the respondents now admit in their counter affidavit that the petitioner is senior to the third respondent, his case ought to have been considered in terms of the order

of this Court in W.P.No.1347 of 1993 dated 05-03-1993 and he ought to have been placed above the third respondent in the seniority list of khalasis/sweepers. Since G.O.Ms.No.212 dated 22-04-1994 came into force subsequent thereto, the question of applying the said G.O. to the petitioner and rejecting his claim, on the ground that the G.O. does not provide for regularization of part-time employees, does not arise. The order of this Court, in W.P.No.1347 of 1993 dated 05-03-1993, is a judgment *inter parties* to which both the Government and the first respondent are parties and is binding on them. Since the said orders have attained finality, it is not open to the respondents to either canvass the correctness or otherwise of the said order or deny regularization of the services of the petitioner on the basis of a subsequent policy decision enunciated in G.O.Ms.No.212 dated 22-04-1994.

The Writ Petition is accordingly allowed and the respondents shall consider the case of the petitioner for regularization and place him above the third respondent and extend him the pay scales as extended to the third respondent. The entire exercise in this regard shall be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

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02-02-2007

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